

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-MC-21372-JAL

PDV USA, INC.,

Miami, Florida

Petitioner(s),

August 16, 2022

vs.

COMMUNICATION SOLUTIONS, INC.,
et al.,

Respondent(s) . Pages 1 - 69

DISCOVERY HEARING

TRANSCRIBED FROM DIGITAL AUDIO RECORDING
BEFORE THE HONORABLE LAUREN FLEISCHER LOUIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 Thereupon,

2 the following proceedings were held:

3 THE DEPUTY CLERK: Calling case No. 22 MC 21372, Judge
4 Lenard, PDV USA, Inc. v. Communications Solutions, Inc., et al.

5 Counsel, would you please note your appearances for
6 the record.

7 MR. SULLIVAN: Good morning. Brady Sullivan for
8 petitioner PDV USA.

9 MR. REIZENSTEIN: Good morning. Philip Reizenstein
10 for the respondent Esther Nuhfer.

11 THE COURT: OK. Thank you.

12 Go ahead and have a seat. I just wanted to make sure
13 that we are good in the courtroom.

14 (Pause)

15 THE COURT: I apologize. I didn't know that we had
16 sort of a partial courtroom going on.

17 Mr. Sullivan, this is your motion. I have a lot of
18 questions that I try to resist asking until the right moment.
19 Any way around it, you will have a fulsome opportunity to
20 present your argument. If I take you off script, know that you
21 will have a chance to go back where you want to go.

22 MR. SULLIVAN: Thank you, your Honor.

23 I would just like to thank the court by convening on
24 such short notice and accommodating the schedules of counsel.
25 We very much appreciate it.

1 Your Honor, in April of this year my client served,
2 properly served two subpoenas on Esther Nuhfer and her company
3 Communication Solutions for the production of documents. We to
4 this day have not received a single piece of paper in response
5 to our subpoenas. In advance of this conference I conferred
6 once again with counsel for respondents and confirmed that the
7 position of respondents remains the same. So we are here
8 before your Honor today.

9 We outlined in our papers why we think Ms. Nuhfer's
10 objections are invalid. There are a few sort of more discrete
11 observations that I'd like to make that perhaps might color the
12 court's decision here.

13 The first, your Honor, is that we maintain Ms. Nuhfer
14 has waived her objections to these subpoenas here. The rule is
15 you have to serve written objections within 14 days, and there
16 are no exceptions unless unusual circumstances and for good
17 cause.

18 At least my reading of the case law, your Honor, is
19 that this is not a liberally granted exception. You have to
20 show unusual circumstances and good cause. We don't think they
21 have shown that here. You look at their papers, they say,
22 well, gee, we had no obligation to object to the subpoenas
23 because they are overbroad on their face and they exceed all
24 fair bounds of discovery.

25 That can't be the case because even on this motion

1 they've conceded that eight of the 16 requests that we have
2 asked for are at least relevant, not overbroad. They have
3 Fifth Amendment objections as a separate matter, but they have
4 conceded that half of our requests are at least relevant.

5 So even as to those other eight, we maintain all the
6 more reason to serve written objections here. The 14-day rule
7 has to mean something. If a party that receives a subpoena can
8 sort of look at it and say we think this is overbroad, we think
9 this is unfair, which I dare say is the majority of folks that
10 receive a third-party subpoena, if that exempts them from
11 serving written objections, then I would submit the rule
12 doesn't mean much.

13 What else do they say in their papers on this point?
14 Well, they say Ms. Nuhfer acted in good faith. They claim here
15 she acted in good faith by agreeing to sit for a deposition.
16 Just to be frank, we think that is an absurd excuse, an absurd
17 objection on this point.

18 Ms. Nuhfer has clearly not acted in good faith in this
19 matter, as demonstrated by the pages of affidavits and exhibits
20 that we have submitted, primarily in connection with our
21 opening brief, showing that Ms. Nuhfer has led our process
22 servers on what amounts to a wild goose chase through the
23 streets of Miami. It has cost my clients thousands of dollars
24 and many hours of wasted time.

25 Just as a point aside, the only reason Ms. Nuhfer has

1 agreed to sit for a deposition here is because we had a police
2 officer serve her papers in her house after multiple attempts
3 to do so.

4 Again, my point here, your Honor, is that the 14-day
5 rule has to mean something. It has to have some applicability.
6 If Ms. Nuhfer's conduct in this dispute constitutes good faith
7 that excuses written objections, then I would submit the rule
8 doesn't have much teeth.

9 The second observation I'd like to make for your Honor
10 pertains to the Fifth Amendment. We think the Fifth Amendment
11 does not afford Ms. Nuhfer license to refuse to produce
12 documents in response to our subpoenas for numerous independent
13 reasons. I would just like to highlight a few.

14 First, Communication Solutions, the entity, the
15 subject of one of our subpoenas, it is a corporation. It is
16 not a sole proprietorship, your Honor. We outlined why that is
17 the case in our papers. They have submitted no evidence
18 whatsoever suggesting that Communication Solutions is the sole
19 proprietorship. We think it is a made-for-litigation position
20 with no support in the record.

21 So what does that mean? What are the consequences of
22 Communication Solutions being a corporation here? Well, number
23 one, the corporation has no valid Fifth Amendment defense.
24 That is from the Braswell case in the Supreme Court.

25 It also means that Ms. Nuhfer, as the custodian of

1 records here, cannot invoke the Fifth Amendment even if the act
2 of production incriminates the custodian of records,
3 Ms. Nuhfer. That is also from the Braswell case.

4 This rule applies even if the custodian of records in
5 question is the sole owner of the corporation. If it's a
6 solely-held, small, one-person corporation, that does not
7 excuse the Braswell rule that the custodian of records must
8 make a production even if it incriminates the custodian of
9 records. This came up just last year before Magistrate Judge
10 Torres in United States v. Stein.

11 So in our view, your Honor, these facts more or less
12 end the Fifth Amendment inquiry because, at least in our view
13 and we would maintain, it is inconceivable that there are
14 documents responsive to our subpoena that are also not
15 corporate records.

16 Why do I say that? Communication Solutions signed the
17 subcontracts between the defendant in our litigation, the
18 subcontracts that form the subject of probably half of the
19 document requests in our subpoena. Those were signed by
20 Communication Solutions. Of course, signed by Ms. Nuhfer on
21 behalf of the entity.

22 It was Communication Solutions that received \$4.5
23 million of my client's money, funneled by the defendant in the
24 underlying litigation. That was the entity, not the
25 individual.

1 Communication Solutions helped draft the contract that
2 is in dispute in our case. How do we know this? Well,
3 Ms. Nuhfer used her Communication Solutions business account to
4 exchange emails discussing early drafts of the contract that is
5 at issue here.

6 So again, anything that is responsive to our document
7 requests and that is also in Ms. Nuhfer's possession of course
8 would be, in our view, a corporate record not subject to any
9 Fifth Amendment defenses.

10 Now, to be clear, we maintain that Ms. Nuhfer does not
11 have a personal Fifth Amendment objection here either.

12 Just sort of in very brief summary, the contents of
13 the documents themselves cannot be incriminating. That is from
14 the Fisher case. Just because the documents themselves might
15 tend to incriminate Ms. Nuhfer via the contents, that is not
16 the issue. It has to be the act of production.

17 The act of production here is both. Again, under the
18 Fisher case it has to be both testimonial and incriminating,
19 the act itself. We maintain it is not testimonial primarily
20 based on the forgone conclusion doctrine, and we also maintain
21 that it is not incriminating.

22 The fact that Ms. Nuhfer possesses these documents,
23 the fact that she might offer them in response to our subpoenas
24 is known not only by us, it's known by this court, it's known
25 by the government that she possesses these documents, it is

1 known by the Miami Herald that she possesses these documents.
2 The act of production here is not going to reveal any
3 incriminating information about Ms. Nuhfer.

4 The next point I'd like to raise for your Honor is
5 that we know Ms. Nuhfer has already produced documents to the
6 government here, including by means of a forensic collection of
7 numerous of her cell phones, phones in her possession. We also
8 know from their brief that the government subpoena calls for
9 documents that are virtually identical to those in our
10 subpoena. We also know that the government investigation, to
11 which Ms. Nuhfer is subject, is, quote, inextricably
12 intertwined -- those are their words -- with the litigation and
13 our subpoenas. The subject matters are inexplicably
14 intertwined.

15 What this means, in our view, is that Ms. Nuhfer
16 already collected, already produced to the government the same
17 documents that we're requesting in this subpoena. We think
18 this fact moots many, if not all, of their objections here.
19 You can't assert a Fifth Amendment privilege over documents
20 that have been produced to the government.

21 They have no burden objection insofar as all or most
22 of the work, as I understand it, has already been done here in
23 terms of collecting the documents.

24 It also, more broadly, your Honor, it refutes this
25 notion that Ms. Nuhfer is somehow tangential to this matter.

1 In respondent's opposition brief they note that both she and
2 David Rivera, the principal of the defendant in the underlying
3 litigation, they are both targets of a criminal investigation
4 that, again, is inextricably intertwined with our litigation.
5 Clearly, Ms. Nuhfer is a key witness here with relevant
6 documents.

7 The final point I would just like to raise is that it
8 is important to keep in mind here that respondents bear the
9 burden on virtually all of the objections here. We maintain
10 that their opposition brief falls well short.

11 This is part of your Honor's discovery practices. It
12 is also in the case law. From Rule 7 of your Honor's
13 practices, to show that the requested discovery is
14 objectionable the burden is on the objecting party to
15 demonstrate, with specificity, how the objected-to request is
16 unreasonable.

17 So, for example, they claim that responding to our
18 subpoenas would be overly burdensome. The case law is clear
19 that when a party raises a burden objection they have to show
20 something. They have to bring to court an affidavit, specific
21 information about how the subpoenas are overly burdensome.
22 They haven't done that here.

23 THE COURT: What, though, about Rule 45's obligation
24 to minimize the burden to a nonparty subpoena recipient?

25 MR. SULLIVAN: Yes, your Honor. That certainly is an

1 obligation that we have. We think we've met that obligation
2 here. In letters exchanged with counsel in between the
3 opposition and the reply brief, PDV USA agreed to narrow a few
4 of the categories of documents that we've requested here.

5 We have offered, and am still happy to negotiate with
6 counsel for Ms. Nuhfer, a protocol with search terms and a date
7 range to make this process not as burdensome as they might
8 think it is.

9 As I discussed earlier, your Honor, we think that
10 most, if not all -- I haven't seen the subpoena -- but we think
11 most, if not all, of the documents we are looking for have
12 already been collected here.

13 THE COURT: What makes you think that?

14 MR. SULLIVAN: Because they have represented to us
15 that the scope or -- excuse me -- that the documents requested
16 in the government's subpoena are virtually identical to the
17 documents requested in our subpoena, and they've also
18 represented that they have made multiple productions to the
19 government in response to that subpoena. They have also
20 represented that they have engaged in forensic collections of
21 Ms. Nuhfer's devices.

22 So unless the government subpoena is somehow
23 dramatically different than ours, which we think it is the
24 opposite -- they have told us they are virtually identical --
25 that is the basis for my understanding, your Honor.

1 THE COURT: OK.

2 MR. SULLIVAN: I think with that, unless the court has
3 further questions.

4 THE COURT: I do.

5 In your reply you had delineated costs associated with
6 service and with prosecuting the motion on the service
7 sufficiency as though it was distinct from other costs.

8 Have you attempted to estimate what costs you contend
9 under Rule 37 you should receive if the motion is granted?

10 MR. SULLIVAN: To directly answer your Honor's
11 question, no, I have not attempted to numerically estimate what
12 those costs will be.

13 I can tell you, just to be very specific about what
14 we're requesting, these would be fees paid by my client to the
15 process servers, which in this case were, in addition to
16 process servers, private investigators to track down
17 Ms. Nuhfer's whereabouts and her location, the opening brief,
18 the drafting of the opening brief, and the work associated with
19 that.

20 The reason, your Honor, is because we think, in
21 fairness, the majority of the opening brief was devoted to the
22 issue of service. It was not until after we served that brief
23 that counsel for respondents conceded that our service was
24 proper. This was after we had sent to the other side case law
25 showing that service by mail was proper. So we don't think we

1 should have to pay for the briefing of that, that particular
2 motion.

3 Afterwards, our reply brief, again, in fairness, was
4 devoted -- really entirely to issues of scope and Fifth
5 Amendment. Those are objections that, in fairness, the other
6 side may raise. We think they are not meritorious, but we are
7 not seeking fees with respect to the briefing of that motion,
8 of that brief, the reply brief.

9 THE COURT: OK. But what is the source of authority
10 for me to award the cost of your process servers?

11 MR. SULLIVAN: Your Honor, may I step and just get
12 my --

13 THE COURT: Of course.

14 (Pause)

15 MR. SULLIVAN: To answer your question, your Honor,
16 from case law, we cite the Xfinity case in our opening brief
17 where the type of service evasion was very similar to what
18 happened here.

19 THE COURT: But was it awarded on a motion to compel?

20 MR. SULLIVAN: Your Honor, I don't know the answer to
21 that question.

22 THE COURT: All right. The reason that I ask is I am
23 not convinced that it is not two separate -- your motion to
24 compel travels on Rule 45 and 26 -- I'm a rules girl; you will
25 learn this quickly -- which means that the authority that I

1 have to apportion fees travels from Rule 37.

2 The sanction that you are proposing I think draws from
3 a separate source of authority and may necessitate a different
4 motion if you sought to pursue it with respect to the process
5 servers.

6 With respect to seeking the fees that you have
7 incurred in prosecuting the motion, that is directly drawn from
8 Rule 37(a)(5), and that I obviously understand. That is why I
9 ask what you estimate those fees or costs to be.

10 The other reason I bring it up now is that Rule 45
11 also requires that I consider -- and I understand your position
12 on burden and whether or not they have met it with respect to
13 the burdensomeness of the response. But there is case law out
14 there as well that requires me to apportion the cost of
15 production so that the respondent to a nonparty subpoena
16 recipient isn't burdened by the cost of production.

17 So all of these numbers or at least these variables
18 are what I'm weighing, but I don't know their numeric values.
19 So that is why I'm asking.

20 MR. SULLIVAN: Understood, your Honor.

21 THE COURT: All right. Did you have a full
22 opportunity to make your presentation, Mr. Sullivan?

23 MR. SULLIVAN: Yes, and I appreciate that, your Honor.

24 THE COURT: OK. Mr. Reizenstein.

25 MR. REIZENSTEIN: Thank you, Judge, and good morning

1 again.

2 THE COURT: Good morning.

3 MR. REIZENSTEIN: May it please the court, Philip
4 Reizenstein on behalf of Esther Nuhfer. I may proceed a little
5 bit slower than normal. I had an eyeglass malfunction.

6 Oh my goodness.

7 (Pause)

8 MR. REIZENSTEIN: You know my phone is ringing.

9 THE COURT: We do.

10 MR. REIZENSTEIN: Yes. What's worse is that is my
11 wife. I apologize. I thought I had this on silent. In 36
12 years that has never happened to me. So pardon me a moment.

13 THE COURT: Maybe airplane mode.

14 MR. REIZENSTEIN: Yes. Exactly. I thought I had done
15 that. OK.

16 THE COURT: You know what is great about that is that
17 in this courtroom your transcript is based on the DAR, right.
18 So one day when one of you order this a court reporter is going
19 to have to include that in the transcript.

20 MR. REIZENSTEIN: I had a phone malfunction and I had
21 an eyeglass malfunction. I had my eyeglasses taped and my
22 vision is a little skewed, but I can proceed.

23 THE COURT: OK. At your comfortable pace.

24 MR. REIZENSTEIN: Sure.

25 THE COURT: The rule in my courtroom, because I can

1 see you are wearing glasses there and I don't know how your
2 mask is interacting with it --

3 MR. REIZENSTEIN: Poorly.

4 THE COURT: -- but if you are -- it is your choice to
5 have your mask on or off while you are presenting.

6 MR. REIZENSTEIN: Thank you. I'm fully vaccinated. I
7 will take it off. It will help me a little.

8 OK. So I will proceed again.

9 Esther Nuhfer is a political consultant for the past
10 two decades. To that end, more than 15 years ago she was hired
11 after meeting David Rivera, who is the subject of a lawsuit
12 that underlies this, and she represented him and assisted him
13 in his various political campaigns. He served time in the
14 Florida legislature, and he was a one-term congressman before
15 losing that election.

16 So by way of explanation, then, what troubles me
17 greatly is many of the facts that were conceded in the
18 plaintiff's reply. So, for example, while they say that they
19 concede Nuhfer had a long-standing business relationship with
20 Rivera, which is something that we did say, we said it in
21 connection not with this case, these underlying facts, the
22 relationship that Rivera had and what he was hired for for
23 their clients, which is this Venezuelan oil company. Their
24 business relationship predated this by well over a decade. Her
25 work for Rivera in this regard only occurred after he lost an

1 election and was short in nature.

2 In that regard, of all the things that they said in
3 their reply brief in the beginning, that is really the mildest
4 of what we believe is incorrect.

5 The next thing that they concede is Nuhfer, and then
6 they write in quotes is assisted -- and that is the only thing
7 in quotes, and then they add their own interpretation, which we
8 believe is wrong -- Mr. Rivera in connection with the contract
9 at the center of the underlying litigation.

10 Once again, the implication is that Rivera, who was
11 hired by this Venezuelan oil company and to provide consulting,
12 the implication and what they are citing to this court is that
13 Ms. Nuhfer assisted him in his work with that oil company.
14 That is just, again, not correct and it is not what we wrote
15 whatsoever.

16 What I wrote was Nuhfer was involved in assisting
17 Interamerican, which is Rivera's company, in securing the
18 contract. Nuhfer did no work for PDV USA nor was her company
19 in contractual privity with PDV USA.

20 Then the final thing that I feel like I need to
21 correct in their reply is that they wrote, and again out of
22 context, that -- and they use my quotes -- from her agreement
23 with Rivera, and then they write, Nuhfer was paid millions of
24 dollars.

25 I was so concerned about that being cited as something

1 that I would have said that I went and did a keyword search in
2 my own writing to make sure that I never wrote to this court
3 that Nuhfer was working with Rivera in his contract with PDV
4 USA and earned millions of dollars. That did not occur.

5 She assisted him in obtaining this contract and was
6 paid money for it. That is one of the reasons why she is not a
7 defendant in this case. There is no contractual privity. She
8 was not working closely with Rivera.

9 Now, that being said, one of the issues that is then
10 confronting this court -- by the way, that is an example, I
11 think, of what is going on here and why this is overbroad.

12 Now, as to good cause, again, I don't believe, as
13 counsel argued, that we ever said Ms. Nuhfer had no objection,
14 no obligation to file objections in this case. What we said
15 was that good cause exists. They say no good cause exists.

16 In the cases that we cited -- it is fairly simple -- a
17 nonparty acting in good faith, and we believe Ms. Nuhfer has
18 acted in good faith not only agreeing by sitting for a
19 deposition, by entering into discussions, which were eventually
20 not fruitful, but discussions occurred frequently on the phone
21 and through email as to the scope of the subpoena and the depth
22 of what they were seeking, and therefore that is sufficient
23 under the case law to meet the issue of good cause.

24 Also, the case law holds, as we cited in our brief, is
25 that when a subpoena is overbroad on its face and exceeds the

1 bounds of fair discovery, that is also good cause.

2 Now, as a prime example of what we believe is the
3 subpoena being overbroad, and, quite frankly, being a fishing
4 expedition, request 7 of their subpoena, and I quote directly
5 now from them: "Concerns a meeting or meetings on a single day
6 when Mr. Rivera and Joel Brakha, the manager of Mr. Gorrin's
7 yachts, who Mr. Rivera asked to sign a version of the same
8 Interglobal Yacht Management subcontract that Ms. Nuhfer
9 previously drafted" -- and by the way, I think that means they
10 have all of this -- "Mr. Brakha testified that Mr. Rivera and
11 an unidentified woman visited Mr. Brakha's offices on March 8,
12 2018 to discuss the subcontract. Mr. Brakha did not recall
13 whether Ms. Nuhfer was the one who attended, but given the
14 timing and the circumstances it is reasonable to assume it was
15 Ms. Nuhfer. Respondents have never denied that Ms. Nuhfer
16 attended the meeting in question."

17 That is so overbroad on its face that if you look at a
18 definition in the dictionary that should be in there what
19 they're seeking. Of all the people in Miami, all the females
20 in Miami on March 18, 2018, they want Ms. Nuhfer to conduct a
21 search, use electronic experts and data recovery experts, of
22 all of her communications, all of her texts, all of her data,
23 all of her emails to see whether or not she has texts, phone
24 calls and emails concerning this meeting because some woman
25 showed up with Mr. Brakha.

1 What they didn't tell the court was when they deposed
2 Mr. Brakha they showed him a picture of Ms. Nuhfer and they
3 asked him, can you identify her as the woman who attended with
4 Mr. Rivera, and he said he could not. I think his words were
5 "I don't know."

6 Now --

7 THE COURT: But, Ms. Reizenstein, those are two
8 different concepts, whether or not it is a specific
9 identifiable request and the burden that she will undertake to
10 find it. So you are describing data recovery and forensic
11 examination and I am not sure why when we haven't started with
12 the first premise of is it relevant and identifiable.

13 MR. REIZENSTEIN: Right. I put that in there as an
14 argument to show that this is not a simple matter, that when
15 they engage in this type of speculation, and this is not a
16 request that they have narrowed, by the way. When they engage
17 in this type of speculation and this kind of overbroad request
18 it has significant consequences for my client. It is not where
19 she goes to a filing cabinet, pulls out a file and says yes or
20 no. These all have significant financial consequences to my
21 client in this regard.

22 Let me pause for a moment.

23 THE COURT: What are the financial consequences? I
24 don't understand that.

25 MR. REIZENSTEIN: Sure. She has to engage a law firm,

1 engage experts, engage us to review the documents that the
2 experts obtain from her data to review to see if they are
3 responsive or not and find out if there are any other
4 objections they may have.

5 THE COURT: What experts?

6 MR. REIZENSTEIN: Experts in the source of data
7 recovery. I don't think it is appropriate to say to a client
8 when subpoenaed on electronic documents or email, do me a
9 favor, just search for something. We need to have a party that
10 insulates it, who has the ability to do this, who can then
11 testify, I did a search of all the relevant documents, data,
12 hard drives. I mean, we would employ a forensic specialist to
13 secure these hard drives and do a search of them and do keyword
14 searches so that when we make a response there is never a
15 request or an allegation that it wasn't fully responded to.

16 I think to do that it is important to insulate a
17 client and, quite frankly, a law firm, with a third party who
18 is engaged simply to say we're telling you to look for this, go
19 see if you find it and give it to us and then we'll take it
20 from there.

21 THE COURT: I understand now. I completely agree.

22 MR. REIZENSTEIN: Right.

23 THE COURT: But as a starting premise, perhaps
24 wrongly, I assumed that the first step would be to conduct some
25 more local examination of records that would or wouldn't

1 confirm that it was or wasn't her at the meeting. Meaning --
2 and this goes, again, to burden.

3 MR. REIZENSTEIN: Right.

4 THE COURT: Mr. Sullivan is right that when you are
5 advancing a position that is premised on burden, you bear the
6 burden of showing something more than we all have a burden
7 associated with litigation. That's a known quantity and not
8 one that I can base a decision on when overcoming a subpoena.
9 So I am just trying to break this down into smaller pieces.

10 MR. REIZENSTEIN: I understand.

11 THE COURT: Candidly, I don't know whether or not we
12 have moved off of this particular point in terms of the failure
13 to respond at all.

14 MR. REIZENSTEIN: Sure.

15 THE COURT: I want to make sure that I understand your
16 position.

17 MR. REIZENSTEIN: Right.

18 THE COURT: Well, I thought that it was not disputed
19 that there wasn't any response or objection to the subpoena,
20 but now I understand your presentation, or I'm asking more
21 directly, is it your position that your conferral with opposing
22 counsel was functionally your objection?

23 MR. REIZENSTEIN: No.

24 THE COURT: OK.

25 MR. REIZENSTEIN: To be clear, it is correct, I think

1 that the time limit that he cited and under different
2 circumstances within that time period a response is filed.
3 What I'm saying is the allegation that we would not meet as a
4 nonparty the exception under good cause and overbroad is
5 refuted by the work that was undertaken.

6 It is not as if these things came in, nobody reached
7 out and said a word, we just all sat around until a pleading
8 arrived that required us to go to court. So I am trying to
9 show here that there was good faith in terms of speaking with
10 them.

11 It wasn't ignored. It wasn't dismissed. It was
12 treated seriously. There were attempts made to resolve this
13 issue. They did not resolve. I agree that the objections
14 initially weren't timely made, and now I think because of the
15 argument of good faith and overbroad it is something the court
16 can still consider.

17 With regard to that, let's pause for a second and say
18 that there's no contention here or dispute that Ms. Nuhfer has
19 received a notice from the local U.S. Attorney's Office that
20 she is a target of a grand jury investigation, and in that
21 regard that fuels really and places into context all of the
22 actions that they complain about.

23 So, for example, well, I would never say, as
24 practicing law for 35 years, that almost all of the time I
25 don't speak with opposing counsel and say let me know what is

1 going on, I will take service and we will go from there. In
2 the context of somebody who has a U.S. Attorney's Office
3 validly coming after them for a criminal indictment with the
4 same subject matter of their lawsuit, it is really -- no
5 explanation should be necessary as to why my client didn't say,
6 sure, I'll submit myself to your case and allow myself to be
7 examined and turn over everything, while I'm also worried about
8 the fact that things that I turn over could very well be used
9 against me by the Southern District United States Attorney's
10 Office.

11 THE COURT: I don't disagree that there is a strong
12 motivation; I just don't understand that it provides a legal
13 basis to avoid lawful process, and by that I don't just mean
14 whether or not who has the better of the argument on the
15 process server --

16 MR. REIZENSTEIN: Right.

17 THE COURT: -- but participating in this process once
18 she indisputably did receive the subpoena.

19 She may not want to give over the documents, but a
20 subpoena is a subpoena.

21 MR. REIZENSTEIN: No, I understand that. I'm trying
22 to place into context, and I have more to say about this
23 issue --

24 THE COURT: OK.

25 MR. REIZENSTEIN: -- as to what occurred during

1 service in this matter.

2 So before any of this reared, essentially, what became
3 sort of an ugly side note to this, someone showed up at her
4 home and essentially committed, what she called the police as
5 to, a burglary with regard to that. It ended up being their
6 process server.

7 Now, I wasn't there and I don't know the specific
8 details, but the police were called because people unlawfully
9 entered a private dwelling and a premises beyond what a process
10 server is allowed to do, to the extent that a complaint was
11 filed, that I don't think has been resolved yet, to the Dade
12 County State Attorney's Office of the actions of this
13 individual.

14 THE COURT: Can I also suggest, as I said to
15 Mr. Sullivan, I don't think that their request for fees and the
16 process server is ripe.

17 MR. REIZENSTEIN: OK.

18 THE COURT: Meaning, it is my impression, and based on
19 the case law that they cited, that that is not something I can
20 order on this motion. It is not properly raised yet, if that
21 is their intention.

22 MR. REIZENSTEIN: I'm concerned about fees and costs
23 but I'm also concerned that the court understand the context --

24 THE COURT: Context.

25 MR. REIZENSTEIN: -- of my client's actions.

1 I think to summarize, then, it is simply that there
2 was an unfortunate incident as this started, and, of course,
3 this is in the context of her obviously not wanting to do all
4 other than what is lawfully required to come forward because of
5 the pending indictment for the U.S. Attorney's Office.

6 Now the next point that we have raised in the context
7 of this being overbroad and burdensome is they already have the
8 documents for the most part here.

9 THE COURT: Can I ask a very blunt question.

10 MR. REIZENSTEIN: Sure. Yes.

11 THE COURT: Is it true that documents have already
12 been produced to the government in response --

13 MR. REIZENSTEIN: Yes.

14 THE COURT: Can I then try to understand the objection
15 to duplicating that production in response to this subpoena?

16 MR. REIZENSTEIN: Sure. There's two parts to it.
17 While I think the subpoenas are very close in nature, they are
18 not exact in nature, and I think that the documents that were
19 provided to the government would be somewhat different than the
20 documents that were provided here.

21 For example, this issue regarding this contract and
22 this meeting, and there are others, are not similar to what the
23 government said. There is also an issue regarding the fact
24 that we don't know for certain what's going to be the
25 government's ultimate action here. Whatever is provided in

1 this case automatically becomes out there for the public to
2 see. So there is that concern.

3 THE COURT: Why couldn't we then consider a protective
4 order?

5 MR. REIZENSTEIN: That would be something we would do
6 if that were to come down here.

7 As a final point on this, Judge, I am fairly confident
8 that these subpoenas are not the same, and I can present it to
9 the court. It came to me in the form of a photograph which I'm
10 having turned into a PDF. I sent it to counsel the other day.

11 The government has issued subpoenas to various
12 entities in this case, this civil case, for documents or
13 depositions that were produced. So when we get back to this
14 deposition that I was talking about of this yacht broker and
15 this issue in their case, I have a government subpoena to the
16 court reporting service for that person's deposition in what I
17 believe is the criminal case that is pending here.

18 THE COURT: So I'm confused because I thought I heard
19 you say in the civil case and in this criminal case.

20 MR. REIZENSTEIN: So what I'm saying is the government
21 in the pending grand jury --

22 THE COURT: In this district.

23 MR. REIZENSTEIN: -- in the Southern District of
24 Florida.

25 THE COURT: Can I just attach a name to it for

1 convenience? Who issued it? The grand jury issued the
2 subpoena or a government attorney issued a request?

3 MR. REIZENSTEIN: I believe -- I have it here. Let me
4 take a look real fast.

5 THE COURT: I'm just trying to keep my players.

6 MR. REIZENSTEIN: I understand.

7 (Pause)

8 MR. REIZENSTEIN: Fortunately, as I said, this was a
9 photograph that was sent to me. It is a subpoena to testify at
10 a hearing, and it is for October 17, 2022, and it is to the
11 court reporting firm for the deposition of Joel Brakha in the
12 matter of PDV USA, which is then counsel's case.

13 So the point, again, that I'm trying to make is we
14 have a very real concern in that the existence of the subpoena
15 shows that the government doesn't have all of the documents and
16 they are peering over the shoulder of what's occurring in the
17 civil case for the purposes of what appears to us, or at least
18 what we are alert to being and obtaining additional evidence
19 that could very well be used against my client.

20 She has agreed to sit for a deposition in this case.
21 We have told them that she is going to invoke the Fifth
22 Amendment, and I fully expect the government is going to get
23 that deposition as well. These are significant concerns that
24 we have with regard to that.

25 THE COURT: I understand. I truly don't mean to

1 minimize your client's concerns, but in terms of a cognizable
2 objection or privilege, really, to production, I am still
3 looking for a very direct answer to why can't they have the
4 documents you produced to the government already.

5 What is the cognizable objection to -- it can't be
6 burden. It can't be Fifth Amendment.

7 MR. REIZENSTEIN: Well, it actually is, because these
8 subpoenas are not -- as I said, they are very, very similar.

9 THE COURT: Right.

10 MR. REIZENSTEIN: We would still have to go through,
11 and I think we were in the 7 or 8 or 9,000 document range.

12 THE COURT: So I am going to ask Mr. Sullivan, so he
13 gets heads up for this, part of what I am at least considering
14 is --

15 MR. REIZENSTEIN: Right.

16 THE COURT: Well, I am going to ask him, would you be
17 satiated with what they produced to the government.

18 I hear you when you say that from your opinion it
19 might not do the trick to everything they are asking for, but
20 as at least to what you produced to the government --

21 MR. REIZENSTEIN: Right.

22 THE COURT: -- what could be the objection to turning
23 it over to this party?

24 MR. REIZENSTEIN: I think it is actually flipped, and
25 I think that it is, in fact, that the government has requested

1 and received more than they have done.

2 I can do this and have it to the court in a day or so
3 and present you both subpoenas and go through it line by line
4 to show you the differences, but it is my belief and opinion
5 based on this that we would have to go through the production
6 to the government and remove certain items that would be
7 responsive to the subpoena. So the government's bigger than
8 this.

9 THE COURT: OK.

10 MR. REIZENSTEIN: That would be the burden with regard
11 to that.

12 THE COURT: OK. So I would submit there's two choices
13 there. One is, if it is overinclusive, I will let Mr. Sullivan
14 complain and tell me that he doesn't want to go through 7 or
15 8,000 documents, some of which might not be relevant, but if
16 you were to duplicate the production exactly as is, do you
17 agree that she would have no objection there?

18 MR. REIZENSTEIN: No, we still don't want to be
19 involved in this lawsuit whatsoever.

20 THE COURT: Chances are she is.

21 MR. REIZENSTEIN: OK. No. I want to make clear, and
22 I think you see what I'm saying is, there is a part of this
23 which their subpoena on its face is overbroad. Regardless of
24 what the government has asked and received, what they're asking
25 for in the context of this case is overbroad, it does create a

1 burden, and, as I have shown in one of the issues, it is
2 clearly just a fishing expedition. So on its face it is not
3 valid.

4 While I don't mean to -- I want to phrase this the
5 right way. We have engaged in discussions in which it is
6 absolutely correct counsel has narrowed their requests for
7 that, which I think is also an additional point of showing that
8 we have come to the court in good faith for purposes of
9 litigating this because the initial subpoena at the outset was
10 really just a whole lot more than they ever really would have
11 been entitled to. We haven't reached an agreement to narrowing
12 it down, but I think there is a concession, at least, that this
13 subpoena needs to be narrowed down.

14 I do want to make a further point here about the
15 documents, Judge. Again, in their reply they say, and I quote
16 from page 7, that PDV USA obtained a handful of emails
17 involving Ms. Nuhfer from other third parties.

18 I think that means they're saying that is all they
19 have of everything they have requested and that does not exempt
20 the respondents from complying with the subpoena. I think that
21 in and of itself is proof of how overbroad this is.

22 They sued David Rivera for a contract that he entered
23 into with their client. It boggles the mind that they would
24 ask my client for that contract, which they've done. They have
25 asked my client for their internal documents where PDV

1 Venezuela transferred their rights to PDV USA. Can they
2 possibly come to court and say that they don't have these
3 documents that they have sued Mr. Rivera on?

4 They took his deposition two weeks ago. They have
5 engaged in civil discovery. That my client has to be the one
6 as a nonparty to give them their own internal documents? That
7 is the point that I'm making when I say this subpoena is way
8 overbroad on its face, way burdensome, and is clearly engaging
9 in a fishing expedition.

10 It cannot be correct that they are in the middle of a
11 trial, or at least hearings in the Southern District of New
12 York, and they don't have the contract that David Rivera signed
13 with PDV USA to provide consulting or the contract PDV
14 Venezuela sent to PDV USA assigning the rights?

15 THE COURT: Let me try to do it this way.

16 MR. REIZENSTEIN: OK.

17 THE COURT: It is your ask and proposal that the
18 subpoena be quashed in its entirety.

19 MR. REIZENSTEIN: Well, that is the Fifth Amendment
20 issue.

21 THE COURT: Here is where, at least, I would -- here
22 are my concerns.

23 MR. REIZENSTEIN: Sure.

24 THE COURT: OK. I understand your position, and I
25 decided to hear the objections because I think they are so

1 important. When we implicate the Fifth Amendment, particularly
2 of a nonparty, I am going to hear them.

3 Mr. Sullivan makes an awfully good argument about the
4 failure to respond and whether or not they should be waived.

5 In terms of moving to quash, though, I think your
6 argument is premised at this point entirely on the Fifth
7 Amendment, right? That was your --

8 MR. REIZENSTEIN: On the overall document in its
9 entirety. That's correct, yes.

10 THE COURT: She should not have to respond at all.

11 MR. REIZENSTEIN: Right.

12 THE COURT: OK. So the difficulty I have with that
13 argument is that this is not a sole proprietorship under the
14 law. It is an incorporated entity. I have had this recently
15 in a number of criminal cases. It is an issue near and dear to
16 my heart. The Communication Solutions subpoena is not going to
17 be quashed on that basis.

18 Does your individual client still have a Fifth
19 Amendment right? I am really having trouble understanding and
20 appreciating the position that she does when -- twofold.
21 Foregone conclusion. Let me just leave it there, right.

22 I think that both the petition and the response in
23 many ways recognize the petitioner knows these documents exist,
24 even as -- what is transitioning me to this point right now is
25 your argument they clearly have these documents from elsewhere,

1 but there are other indicia on these papers that say foregone
2 conclusion, and Judge Torres' decision in Apollo. I have a
3 very difficult time -- and the fact that these documents in
4 some degree, perhaps overinclusive, but to some degree have
5 already been turned over to the government in response to a
6 grand jury subpoena.

7 If then there is not a cognizable Fifth Amendment
8 privilege by your individual client, and there clearly isn't
9 from the entity, then we are not quashing it and we need to
10 talk about scope.

11 MR. REIZENSTEIN: OK. May I --

12 THE COURT: Why you're here.

13 MR. REIZENSTEIN: -- with the understanding that I
14 hear you loud and clear briefly, in the course of 20 or 30
15 seconds, just have access to the record, as it were, so that my
16 position is clear.

17 THE COURT: Please.

18 MR. REIZENSTEIN: Again, not to argue with your --

19 THE COURT: Mr. Reizenstein, I know what you are
20 doing. It is OK. Go ahead.

21 MR. REIZENSTEIN: -- what I think is a very reasoned
22 statement to me, and I don't take issue with that.

23 That being said, I have searched -- if we are going to
24 boil this right down and move quickly to the issue of sole
25 proprietorship, I have looked long and hard at this to try to

1 find some definition in the State of Florida.

2 Counsel for the plaintiffs cited, and I'm sure they
3 have better research than me, could only come up with something
4 from the Florida Department, Division of Corporations. I can't
5 seem to locate cases that distinguish between it. My client,
6 in fact, has a corporation that she filed, but I think the
7 record is clear she is a single individual, there are no other
8 people who are there, it is in all other de facto, if not de
9 jure, circumstances a sole proprietorship.

10 I acknowledge the decision in the Stein case by
11 Magistrate Torres, and you have obviously had this litigation
12 before you. I note in the Stein case, while they talk about
13 the sole owner and custodian of records of a corporation, they
14 don't really look at -- and I was just reading it while counsel
15 was arguing -- the issue of whether or not it is a sole
16 proprietorship. I think this is something that is ripe for
17 perhaps review at a higher level than myself.

18 THE COURT: I think you're right.

19 MR. REIZENSTEIN: Because for me, and I will conclude
20 with this, I look at this as saying, I have a client who is her
21 own businesswoman and, like millions of other Americans when
22 they open a business, their CPA says, OK, here is what you need
23 to do; you have to form a corporation so you can get a business
24 bank account; you put your money in there, and then you pay
25 your taxes on it. That seems to me to be some sort of now

1 loophole gotcha for every business in the United States, and
2 there's probably hundreds of millions, if the government comes
3 looking for you or you get wrapped up in a lawsuit and the
4 government is looking for you, all of the sudden the Fifth
5 Amendment to the United States you've lost it because of our
6 practices and procedures in our society. You are bound by the
7 law, and I understand that, but we are objecting to that, for
8 what it is worth, and I am prepared now to address your
9 concerns, and thank you for that time.

10 THE COURT: Of course.

11 MR. REIZENSTEIN: Sure.

12 So, again, with regard to scope, I will say counsel
13 reached out to me yesterday. We have open lines of
14 communication and speak frequently. There is never a problem
15 in that. I think we'd agree to that -- may not agree to much
16 else -- but we agree to that.

17 We did talk, and the substance was, gee, we're very
18 concerned about these issues, Mr. Sullivan, but thanks for
19 reaching out and let's keep talking.

20 So if your concern is scope, I can present arguments
21 to you today, I can sit with counsel at your direction, we can
22 prepare something for you. If there are particulars, and I'm
23 just throwing this out here and freewheeling, if there are
24 particulars that we can't particularly agree to, some of the
25 numbers in that subpoena, we can refer to you with what we have

1 agreed to. I will proceed however you wish.

2 THE COURT: I appreciate that because, again, I am
3 very sensitive to a nonparty subpoena recipient and the burden
4 that is on her, and this is a unique case. Believe it or not,
5 I often have third-party subpoena recipients who have the
6 specter of a criminal investigation being out there and it
7 being a reason they don't want to participate. Yours is,
8 quote, tangible. I understand that.

9 We have already talked about the fact that it is not
10 going to overcome her compliance with the subpoena. So what do
11 we do with it?

12 MR. REIZENSTEIN: Sure.

13 THE COURT: What I would propose, hearing from both of
14 you, and time is not as much an issue for me as it is for
15 Mr. Sullivan. So while I always prefer, once my parties know
16 that there is not going to be a motion to quash, where do we go
17 from here. I don't know the extent to which Mr. Sullivan's
18 client has that flexibility. I know that the email requesting
19 for this hearing date observed the upcoming discovery deadline
20 in the underlying litigation.

21 So I put that out there first, but I would come back
22 to the suggestion that the least burdensome, least
23 objectionable manner of substantially complying with this
24 subpoena would be to duplicate the production that's been
25 provided to the government and would again ask why that is not

1 sufficient.

2 I would also then, in anticipation of where you
3 started with respect to a forensic examination and a
4 third-party vendor, I couldn't agree with you more that that is
5 the best practice, and I wish it were the case in every one of
6 my civil cases. It is not. But it might not be necessary
7 here.

8 Before we go down that path, I would want to know very
9 specifically from the subpoenaing party why she should have to
10 undertake such a probing analysis of her deleted and otherwise
11 cold-stored data and what those repositories are.

12 So anything that would go into backup data, data
13 recovery, anything like that, that would require a second
14 hearing where I would have to say what are you looking for and
15 what is the cost associated with it. So start back where I was
16 trying to get you to go.

17 MR. REIZENSTEIN: Sure. So I will say this. I would
18 need to sit with Mr. Sullivan subpoena with subpoena, meaning
19 what we have complied with to the U.S. government -- and by the
20 way, a lot of that the answer was we don't have any. So it
21 would be the same. To the extent that his request is within
22 the government's request, sure. So if his request fits inside
23 what the government has requested, we can then fulfill his
24 requests. Some of them are identical. There might be some
25 year differences to it, which are probably easily resolved by

1 us just doing searches at this point with what was turned over.
2 So if he is at 2018 and the government was at 2016, we should
3 be able to excise things out.

4 THE COURT: How are the documents that you have
5 produced stored? Do you have it up on a review platform? Do
6 you just have it saved on a share drive?

7 MR. REIZENSTEIN: We employed a review platform that
8 was significantly less expensive than I know the one that
9 everybody uses is called Relativity.

10 THE COURT: Relativity is top of the line.

11 MR. REIZENSTEIN: Yes, and it is a lot of money.

12 THE COURT: That is the Rolls Royce of review
13 platforms.

14 MR. REIZENSTEIN: So what we did, in answer to the
15 government's subpoena -- I have an associate who is much
16 younger than me, which means she understands all of this, but,
17 unfortunately, she had a family emergency in Pittsburgh. They
18 are different formats. One is native format and then another
19 is a PDF, and there is a third.

20 THE COURT: TIFF.

21 MR. REIZENSTEIN: We used the platform called Cloud9.
22 We went up to it. They did their work. We pulled it down.
23 Now we have it on a cloud drive.

24 THE COURT: OK. When you say "they did their work,"
25 you mean your document vendor, Cloud9?

1 MR. REIZENSTEIN: Cloud9 assisted us in two things.
2 We did the searches. Once we had the raw data, we did the
3 searches and the keywords and then we were able to manipulate
4 the formats.

5 THE COURT: OK. So that is great because then to the
6 extent there is any manipulation of the original documents in
7 order to comply with what Mr. Sullivan's looking for, you can
8 do it automatically and it is in a manner that you can, without
9 duplicating costs, be able to produce it.

10 So without any challenge to your previously-noted
11 objections, assuming that those for now are preserved for
12 appeal, I'm just asking you at this posture what to my proposal
13 that you produce from that body of documents to Mr. Sullivan in
14 response to the subpoena?

15 MR. REIZENSTEIN: As I said, the answer is we are
16 going to follow the court's order. I would just need to sit
17 down with him side by side and make sure --

18 THE COURT: You're right. I should ask a better
19 question, which is, anything else that you and I have not
20 talked about yet that would be an impediment to you producing
21 from that body of documents that we haven't covered?

22 MR. REIZENSTEIN: I have one consideration that
23 concerns me that has nothing to do with documents but is the
24 thing that rules my life, and that is time.

25 THE COURT: Time.

1 MR. REIZENSTEIN: So I would like to hear from
2 Mr. Sullivan, and let me just start the opening bid, which is
3 as follows.

4 I just returned from two weeks of what should have
5 been vacation but deadlines ensued. I have got two this week
6 and an argument in the Southern District of New York where they
7 are trying to remove me as a defense attorney for a conflict.
8 That's on Wednesday. I'm fairly booked, and I also lost the
9 associate who works on this just with a family matter for a few
10 days, but she can work remotely.

11 So I want to work with him once you rule and I see
12 where you are going with this. What I don't want to have
13 happen is then we defeat it because I have sometime issues and
14 I want to let you very specifically know I have these time
15 issues.

16 THE COURT: And what was your opening bid?

17 MR. REIZENSTEIN: Just to tell you how swamped I am
18 and concerned I am and then to see what Mr. Sullivan can
19 propose, and then I will work within that the very best that I
20 can.

21 THE COURT: I will warn you that usually when I have a
22 discovery hearing and I compel the production of documents, I
23 order it done within 14 days.

24 MR. REIZENSTEIN: Right.

25 THE COURT: So that is really the opening bid that

1 you're working off of.

2 MR. REIZENSTEIN: Right.

3 THE COURT: I will hear from Mr. Sullivan before you
4 bid against yourself, so to speak.

5 MR. REIZENSTEIN: I can throw myself on the mercy of
6 the court and say Judge Martinez denied a motion regarding a
7 sentencing memorandum and a sentencing and the Fourth District
8 gave me until Friday because of my vacation to file a reply
9 brief, and then I have got to be in New York. That is where my
10 concerns are literally starting today when I leave here.

11 I have got to get this out. I can have someone begin
12 to work on this remotely and also can discuss with my client --
13 there is another law firm that is assisting us in the criminal
14 investigation, and I am sure they can throw some people at it,
15 but I need to speak with her about that and them.

16 I am going to do everything I can to reply quickly. I
17 would like to know what his issues are and then I will tell you
18 exactly what --

19 THE COURT: Well, I know one of his issues is his
20 discovery period is closing and, to the extent they have
21 followup issues with what is produced, they don't want to have
22 the prejudice of not being to come back to this court.

23 MR. REIZENSTEIN: That is why I raised it.

24 THE COURT: So then understanding that even a little
25 bit of attention is attention away from your other pressing

1 matters, it -- well, I suppose we still have to hear from
2 Mr. Sullivan. It seems as though you don't have to rereview
3 the body of documents. You may or may not be using automated
4 parameters. Like you said, perhaps the existing data might be
5 for five years and they are seeking four.

6 MR. REIZENSTEIN: If we agree on parameters, I know I
7 have someone who can work remotely on this. That being said,
8 since I'm not conversant and I never wanted to learn how to go
9 up to Cloud9 and those things, I would have to rely on them.
10 You know better than me probably how long it takes, and I will
11 have someone who is out of state dealing with a family issue,
12 but I think is sitting around in a house watching some kids,
13 work on it.

14 THE COURT: OK.

15 MR. REIZENSTEIN: Yes.

16 THE COURT: All right. Mr. Reizenstein, I asked you a
17 lot of questions. Did you have an opportunity to make a
18 fulsome presentation?

19 MR. REIZENSTEIN: Yes, I did. Thank you.

20 THE COURT: OK.

21 MR. REIZENSTEIN: I would just say as we are
22 discussing this I may reach out to that person now and say I
23 need you to be available, please confirm kind of thing.

24 THE COURT: All right.

25 MR. REIZENSTEIN: I can do that by text.

1 THE COURT: I appreciate it.

2 MR. REIZENSTEIN: Although I'm really, really
3 frightened to go touch my phone at this point considering how
4 this started. Again, I sincerely apologize. That has never,
5 ever, ever happened to me. This is the first time.

6 THE COURT: At an investiture a few years ago a phone
7 rang behind me, and not in the judge's box, before I sat in
8 that box, but the person attending had a personal ring go off
9 that they were too embarrassed to reach for and turn off, but
10 the person called right back and it just kept going on loop.

11 MR. REIZENSTEIN: Thank you, Judge.

12 THE COURT: Indeed.

13 Mr. Sullivan, start where I pushed Mr. Reizenstein to
14 end, which is what to my suggestion that they produce to you
15 what they produced to the government as a starting point and
16 without prejudice to you saying I'm still missing the following
17 categories of documents, but starting there.

18 MR. SULLIVAN: Thank you, your Honor. A few initial
19 remarks to this proposal, which I think we would be amenable to
20 under certain circumstances.

21 What we would really need to know, it is not just a
22 matter of sitting down side by side with the subpoenas; this
23 request mirrors this one, this one is a little different than
24 this one. What it really comes down to is what's been done.
25 What sources of documents have been collected. Have

1 Ms. Nuhfer's emails been collected, have her text messages, her
2 What's App messages, which, by the way, we know she uses for
3 business. We are not fishing here. We have seen text messages
4 discussing business matters with her consulting firm. What
5 date range has been searched. What search terms have been
6 used. Basic ESI parameters.

7 It sounds like Mr. Reizenstein has an associate who
8 probably knows the answers to these questions, but certainly we
9 would need to know in very short order what parameters were
10 used.

11 Of course, we also need a sense for their
12 responsiveness criteria that that comes from the subpoena. If
13 we can get comfortable that the categories of documents being
14 requested sufficiently overlap with what we're requesting, and
15 hypothetically I will accept counsel's representation on that
16 fact, then I think we're fine. It is just a matter of
17 understanding what's been done.

18 I should say on the flip side of that, what's been
19 withheld. Are they asserting some sort of a Fifth Amendment
20 objection over documents that they maintain are not corporate
21 records? We would need to know that.

22 We would like to see a privilege log. I understand
23 this is a third party.

24 THE COURT: The local rule requires a privilege log.

25 MR. SULLIVAN: I'm sorry, your Honor?

1 THE COURT: Our local rule requires a privilege log
2 for anything that's been withheld.

3 MR. SULLIVAN: Excellent.

4 MR. REIZENSTEIN: Let me cut to the chase. There were
5 either documents that were not responsive or they were turned
6 over. There was no privilege --

7 THE COURT: Just so we are all on the same page,
8 because I can see Mr. Sullivan making a slight face, that may
9 be the case for what has been produced. Anything else, if you
10 were to withhold something --

11 MR. REIZENSTEIN: Oh, of course.

12 THE COURT: -- everyone understands that our local
13 rule requires production of a privilege log or it's waived.

14 MR. REIZENSTEIN: As I recall now, the government
15 subpoena was fairly broad to the point where -- I mean, there
16 were a lot of campaign literature from years and years ago that
17 had people's names in it. I am like, do you really need to see
18 the fundraiser for so-and-so at the local political club in
19 Hialeah in 2017. That's not what you are looking for.

20 THE COURT: Understood.

21 MR. REIZENSTEIN: So it was in the nature of that, and
22 then there were hundreds and hundreds of duplicates. There was
23 no privilege log and there was nothing litigated with regard to
24 what they requested other than me just saying, you sure you
25 really want the stuff about John McCain's campaign.

1 THE COURT: OK.

2 MR. SULLIVAN: So in summary, your Honor, if we could
3 get comfortable as to the precise parameters of what was done
4 here and what was withheld, then I think this is a solution
5 forward. We certainly have no interest in making a third party
6 go back to the well, so to speak, when the collection has
7 already been done. It just doesn't make any sense.

8 So I think that's our position there.

9 I guess I should just say, to the extent we do sit
10 down and determine that the responsiveness criteria that their
11 team has been employing to determine whether a document is
12 responsive or not, if that criteria is in fact broader than our
13 subpoena, we would be happy to just accept the document
14 production in its entirety. To the extent it is 7 to 8 to
15 9,000 and not 70 to 80 to 90,000.

16 We actually already stipulated in this case to have
17 Ms. Nuhfer's production be subject to the protective order.
18 The protective order very clearly provides for that. It is
19 like every other protective order. Mr. Reizenstein raised
20 concerns about this becoming public. It is under a protective
21 order, just like any other documents that would be produced.

22 They are welcome to mark confidential whatever they
23 have a reasonable basis for marking as confidential.

24 I take your Honor's point that certain components of
25 our subpoena might have been a bit reaching with cold storage

1 facilities and whatnot. At bottom here what we're looking for
2 is emails, text messages, documents that have been saved. We
3 are not asking -- and to the extent our subpoena does we will
4 sort of withdraw the request -- for some sort of a soup-to-nuts
5 forensic exam here of every document that's ever crossed the
6 devices of Ms. Nuhfer.

7 That said, we do need ESI. This is not a case where
8 the party can sort of pull together the contract and the board
9 minutes and a few documents that everybody agrees are core and
10 central. This is not a case like that. We do need ESI, but it
11 sounds like we are in agreement on that. Again, that is all
12 the more reason we need to understand what exactly was done
13 here.

14 I am happy to address timing, unless your Honor has
15 questions about what I have just discussed.

16 THE COURT: Well, I am going to make the observation
17 that our dearly departed Dave Brannon said five years ago, all
18 discovery is ESI at this point. So that is not unique and that
19 is not any type of exception here. But my point should be more
20 generally understood that when it is a nonparty subpoena
21 recipient, I am going to require that you identify the
22 documents you are seeking with enough specificity that it
23 doesn't undertake a search of a scope that isn't proportional
24 to that subpoena recipient. Part of that consideration does
25 take into account your ability to get documents from other

1 repositories or the expense that it will obviously require of
2 that respondent.

3 So that is the prism through which I am talking about
4 these documents, and, again, through the proposal of take what
5 they have first and -- I understand you would still have
6 questions about how they were collected or whether or not they
7 overlooked known and important repositories that they couldn't
8 be fully responsive, but nonetheless, they will inform any
9 additional requests that you make that this reveals the absence
10 of this and you need to go get it.

11 MR. SULLIVAN: Yes, your Honor. It is a two-step
12 process.

13 THE COURT: Exactly.

14 MR. SULLIVAN: So we would look at the production and
15 say, my gosh, they haven't even produced emails from this six
16 months. I'm not making any accusations, but it is just a
17 hypothetical. Or we look at it and we say, this is everything
18 we need.

19 But just as a secondary kind of corollary there, we
20 really would request that there be a requirement that we are
21 told what was done here because we don't know what we don't
22 know. There are spoliation issues in our underlying
23 litigation. In order to get comfortable --

24 THE COURT: I understood that from your petition. But
25 some of these categories -- I'm looking at, I think this is her

1 subpoena -- give me a split second.

2 MR. SULLIVAN: The subpoenas are identical, your
3 Honor.

4 MR. REIZENSTEIN: Well, actually, I'm just looking at
5 them really closely and their paragraph 10 is identical to the
6 government's subpoena.

7 THE COURT: Sorry. I was looking at the subpoenas at
8 issue in my case, and I was looking at request for production
9 No. 3: All documents and communications concerning PDV USA's
10 attempt to transfer its rights and obligations under the
11 consulting agreement to PDVSA.

12 That strikes me, and maybe you two see it differently,
13 as an example of what are you looking for there, without asking
14 her to apply search terms, what are you looking for there.

15 MR. SULLIVAN: Certainly, your Honor. I guess I will
16 note at the outset that request No. 3 has not been objected to
17 by counsel for Ms. Nuhfer. I will nonetheless, of course,
18 answer your Honor's question.

19 What happened in our litigation was there was an
20 attempt by our client, PDV USA, to assign the contract with
21 David Rivera to its ultimate parent company. Now, what does
22 that have to do with Ms. Nuhfer? We don't know, of course,
23 because we haven't actually seen documents in her possession.
24 We know that she was blind copied, BCC'd, on a number of emails
25 during the 2017 time period when this assignment occurred.

1 These are emails from David Rivera to our client, to PDV USA.

2 This is an entity largely employed by individuals from
3 Venezuela. Ms. Nuhfer was blind copied on these emails. The
4 emails run the gamut. They concern payments over the contract,
5 they concern invoices, progress reports that Mr. Rivera claims
6 demonstrate that he's performed.

7 Can I represent to your Honor that I specifically
8 remember an email about assignment on which Ms. Nuhfer was
9 copied? No, I can't standing here right now, but we certainly
10 have reason to believe she was involved in the day-to-day
11 communications between Mr. Rivera and our client.

12 I think something like request No. 3 would probably be
13 captured by search terms, that I assume Mr. Reizenstein has
14 already run and would be responsive to probably request No. 1.
15 To specifically answer your question, that is the genesis of
16 request No. 3.

17 THE COURT: Right. Your reference back to No. 1 is
18 exactly why I say then what are you looking for in No. 3, how
19 do they differ.

20 To the extent you are drawing from a body of documents
21 you already have and you are asking her to identify further
22 communications that specifically relate to a particular event,
23 I think you identified 2017 or communications between
24 particular persons, that's the level of specificity that I am
25 going to require.

1 No. 3, I understand that you have a sense of what you
2 thought it meant, but on its face I don't understand how it is
3 different than No. 1, and I don't want the parties spending a
4 tremendous amount of time figuring out what would satisfy one
5 versus the other. That is why I'm asking about that one.

6 I hear you when you say that they didn't object, but
7 isn't your primary argument they didn't object to anything?

8 MR. REIZENSTEIN: I would say we raised it today --

9 MR. SULLIVAN: Understood, your Honor.

10 MR. REIZENSTEIN: -- and we objected as an example of
11 it being two things overbroad. If you look at documents and
12 communications, communications is one thing, but documents, it
13 is their client, PDV USA.

14 THE COURT: Right.

15 MR. REIZENSTEIN: We don't have access to their
16 documents. However their company transferred it to PDV USA
17 from PDV Venezuela has nothing to do with us.

18 THE COURT: I understand that.

19 MR. REIZENSTEIN: Communications is one point, and I
20 get that if there are conversations with Mr. Rivera, but the
21 documents between their client and I guess an offshoot
22 transferring something --

23 THE COURT: I am going to go out on a limb and assume
24 that documents were somewhere defined as all documents within
25 the meaning of Rule 34?

1 MR. SULLIVAN: Yes, your Honor.

2 THE COURT: There it is.

3 MR. SULLIVAN: I don't understand Mr. Reizenstein's
4 objection.

5 THE COURT: So you understand that it just means -- it
6 might be a What's App text, but it is within Rule 34's
7 definition of document --

8 MR. REIZENSTEIN: I do understand that --

9 THE COURT: -- as opposed to a final agreement.

10 MR. REIZENSTEIN: -- but I'm sort of saying that's a
11 communication. I was just reading more into it, like if there
12 is some sort of internal documents we don't have those. We may
13 have communications.

14 THE COURT: Right.

15 MR. REIZENSTEIN: Right.

16 THE COURT: I guarantee that is not what they're
17 looking for or what I would compel. If it is not within your
18 control, you can't turn it over.

19 MR. REIZENSTEIN: Exactly.

20 THE COURT: So no dispute there.

21 OK. Let's get to the heart of what we are going to do
22 here. You have heard me say that 14 days is my norm when I
23 have compelled documents. I know you have upcoming deadlines.
24 The delay in this case is largely mine. Through the mystery
25 coding that sometimes happens in our district when it was

1 referred, I overlooked it. So we have set it for hearing and
2 we are going to resolve it as quickly as we can, but I have got
3 you up against this deadline, and, I'm sorry, but what do we do
4 now?

5 MR. SULLIVAN: Thank you, your Honor.

6 I want to be, of course, reasonable. Just for
7 context, we have an August 19th, Friday, fact discovery
8 deadline. Was I prepared to come before your Honor today and
9 say everything needs to be done and wrapped up by Friday? That
10 might not be the most reasonable request. I think our client
11 would like to see documents as soon as possible.

12 Taking this in steps, perhaps -- again, recognizing
13 that the documents are going to be subject to a protective
14 order, recognizing that there is significant overlap in the
15 subpoenas, a flip of the production I would ask occur this
16 week. Insofar as you take the documents, put a new Bates stamp
17 on them. They've already been shipped out the door. There are
18 no privilege concerns. Give them to us.

19 MR. REIZENSTEIN: Wait.

20 MR. SULLIVAN: Can I finish?

21 THE COURT: Let me try to -- go ahead.

22 MR. SULLIVAN: Likewise, I think -- again,
23 Mr. Reizenstein might have a different view -- to the extent
24 all of this work has been done, simply advising us as to some
25 of the basic parameters that I have outlined could perhaps

1 occur this week. Again, we will seek relief from the
2 underlying litigation in New York as necessary, to the extent
3 we have to, but I guess my point, your Honor, is --

4 THE COURT: Can I ask a question. I understand your
5 discovery deadline is the 19th. What is your next impeding
6 deadline that production here in 14 days could prejudice? Do
7 you have something else going on that is coming up in the
8 Southern District? Because usually the discovery deadline just
9 means you can't ask me for anymore help, you had to ask by the
10 19th.

11 MR. SULLIVAN: No. Exactly.

12 THE COURT: By me, I meant that judge.

13 MR. SULLIVAN: Yes, exactly right. That is why I'm
14 not asking for everything to be done this week.

15 To the extent it drags on to the next, are we going to
16 be prejudiced? Again, I certainly can't speak for Magistrate
17 Judge Lehrburger, who is in charge of our schedule, as to
18 whether we would somehow be not permitted to receive and then
19 serve to the other side these documents. I don't suspect that
20 will be an impediment, and I can't certainly point to another
21 deadline that if it were to spill to two weeks then we have a
22 real problem. I can't make that representation to your Honor.

23 THE COURT: At least I know you have got a good judge.

24 MR. SULLIVAN: Yes, your Honor.

25 THE COURT: Again, I unfortunately have to own that

1 the delay since your petition was filed and your hearing date
2 is mine, and I'm sorry, but I am not going to trim their time
3 to respond by that much because of me.

4 MR. SULLIVAN: Understood, your Honor.

5 MR. REIZENSTEIN: May I just be clear about something?
6 It is just not -- and I maybe didn't do a good enough job
7 clearing this, but in now looking very closely at the
8 government subpoena there is one paragraph that has like 11
9 subparagraphs or letters that involve the same individuals.
10 That's exactly the same. But the government asked for loans,
11 bank records, financial statements, documents, tax returns,
12 calendar book appointments, all sorts of other matters that I
13 just can't say, well, here's what we gave to the government and
14 take a look at that because none of that is covered in here.

15 Now, as I said, the government's broader, theirs is
16 smaller. Within what we did we are still going to have to go
17 and if a search term coincided with wires or transfers or bank
18 statements, they've got that, but now we have got to go in and
19 excise that out because I'm giving them things they never asked
20 for that is personal data to my client that no one would ever
21 want to volunteer.

22 THE COURT: I understood that.

23 MR. REIZENSTEIN: OK.

24 THE COURT: I have understood that that is your
25 position.

1 MR. REIZENSTEIN: I heard them say, well, just flip it
2 to us this week.

3 THE COURT: I understand that is their request, but
4 that is not what is in the subpoena and it is not what I am
5 compelling.

6 MR. REIZENSTEIN: All right.

7 THE COURT: So it is going to be -- you both are
8 hearing me, I hope, which is, you have got a body of documents
9 that at least complies or responds to their subpoena in part.

10 MR. REIZENSTEIN: Probably most and then more than.

11 THE COURT: You will know better than we do.

12 MR. REIZENSTEIN: Right.

13 THE COURT: You will also make a competent choice
14 about what from there to produce to the other side. But in
15 order to produce, you will not have to engage in collection or
16 any back-to-the-well efforts. Rather, you have got it loaded
17 on a review platform.

18 My point here is, it should significantly shorten the
19 response time. The extent to which you manually or conduct a
20 linear review of those documents before you produce it is going
21 to have to be a decision that you and your client and your
22 associate make depending on what the nature of those documents
23 are. Mr. Sullivan and I don't know. So that is on your end to
24 decide.

25 It will remain Mr. Sullivan's ability to come back and

1 say, we got these documents, we got them quickly, we appreciate
2 that, but these are the following requests that weren't
3 responded to and, after conferring with Mr. Reizenstein,
4 there's been no effort to produce. How you actually
5 logistically comply with it I am going to leave to you, but you
6 will have to do it fairly quickly, not within the next seven
7 days, and I understand your position, Mr. Sullivan, if it was
8 going to be an exact dupe it could have been run today, but
9 they are going to have the ability to look at it and make a
10 decision.

11 MR. SULLIVAN: Understood, your Honor.

12 MR. REIZENSTEIN: Here's what I would propose, because
13 in just thinking that some requests do mirror the government's,
14 those can be complied with rather quickly because, as I said,
15 there is a portion of the subpoena that is exactly the same.

16 THE COURT: Right.

17 MR. REIZENSTEIN: So that is the easy part.

18 THE COURT: I was thinking that to the extent you can
19 get a rolling production out --

20 MR. REIZENSTEIN: Yes.

21 THE COURT: -- that would be exceptionally helpful in
22 probably changing petitioner's spirit about the rest of the
23 conferral.

24 MR. REIZENSTEIN: Sure.

25 THE COURT: So to the extent that you can just grab --

1 and hopefully your review platform has tags.

2 MR. REIZENSTEIN: It does, yes. I will do that. But
3 then there is a portion that is going to require more intensive
4 work. So that is why I'm saying if we agree to the rolling
5 production, which I think is logical and there is no reason not
6 to, I am still going to ask for 14 days because I don't know
7 how I can humanly possibly do this otherwise. I don't have a
8 large law firm.

9 THE COURT: You have heard me that I am not inclined
10 to trim it less than the 14. I understand that is going to put
11 you past your fact deadline, but understand that that is a --
12 when we are talking about rolling, I don't mean that the
13 rolling begins within 14.

14 MR. REIZENSTEIN: No, no, no.

15 THE COURT: I mean it concludes in 14.

16 MR. REIZENSTEIN: I'm talking about if to the extent
17 when I leave here and I can have someone look at this and say,
18 OK, look at paragraph 10, it is the exact same as the
19 government's. What did we provide to them because this is
20 exactly the same language. Excise all of those out and prepare
21 to send those. I don't want to say that can be done today,
22 tonight or tomorrow, but I certainly can say to you that phrase
23 that I just used to you will be delivered to the person who is
24 going to be working with me on this within the hour.

25 THE COURT: OK.

1 MR. REIZENSTEIN: So then I anticipate that would
2 occur very quickly and then we will get into the meat of the
3 work --

4 THE COURT: OK.

5 MR. REIZENSTEIN: -- which is a little bit harder.

6 THE COURT: Understand too that sometime within that
7 14-day time it is, I think, necessary to confer with
8 Mr. Sullivan, probably after you have reviewed with your team
9 and identified the extent to which this subpoena includes
10 categories that haven't been collected, and this goes to
11 Mr. Sullivan's point of, OK, but how did you get the documents
12 in the first place.

13 MR. REIZENSTEIN: Right.

14 THE COURT: There may be repositories that you did not
15 consider for the government subpoena. I know you have talked
16 about the phone collection, and so it may be the case that this
17 hasn't happened. But somewhere in between you all have to
18 figure out if in fact your collection for the government is
19 going to completely satisfy the petitioner's subpoena or if it
20 is not and be making efforts to figure that out before the 14
21 days runs.

22 MR. REIZENSTEIN: I don't know if you want to get into
23 the meat and potatoes of this, but I know there are things that
24 they are looking for that I know we never had. We couldn't
25 give them to the government.

1 THE COURT: That will be extremely helpful then to
2 Mr. Sullivan to understand if that affects his other requests.

3 Here is my intention. So understand that the motion
4 is granted. The objections are largely overruled. The
5 document production is due within 14 days. However, so that we
6 don't get too far out and have a problem brewing, that we
7 haven't made an effort to fix, it is my intention to set you
8 down for a status, and I will listen to you both on proposed
9 dates, so that after you have had a chance to speak with the
10 benefit of these rulings and Mr. Sullivan has withdrawn any
11 request for some deep-dive forensic review, and,
12 Mr. Reizenstein, you have a better sense of what it is that
13 they are truly looking for, I can know in advance if there are
14 any continuing objections over the petitioner's position that
15 more has to be collected or what has been produced so far is
16 not what they were looking for or what they expected, but I'm
17 looking right around the 14-day mark, whether it is right
18 before or right after. So it is essentially --

19 MR. REIZENSTEIN: As to a report to the court, like a
20 status?

21 THE COURT: No. I think it would be cheaper and
22 faster if we have it as a status even if we did it
23 telephonically rather than have you put pen to paper.

24 MR. REIZENSTEIN: That's fine.

25 MR. SULLIVAN: That's fine with us, your Honor.

1 THE COURT: OK.

2 MR. SULLIVAN: If I may, your Honor.

3 THE COURT: What is on your mind?

4 MR. SULLIVAN: My apologies. So that I fully
5 understand the court's ruling, Mr. Reizenstein has represented
6 that he is going to go through this prior document production
7 and some documents will go to us and some will not. I guess,
8 is part of the court's ruling today governing the
9 responsiveness criteria that allows Mr. Reizenstein to make
10 that decision?

11 In other words, I don't really have any visibility
12 into sort of what -- the decision-making process. Is it just
13 whether the documents are responsive to our subpoena? I know
14 your Honor has raised some concerns with at least one of the
15 requests. So I guess I'm just trying to understand what the
16 criteria will be, or is this just something that your Honor
17 wants the parties to sort out amongst themselves?

18 THE COURT: So I am not following your question, but
19 if I think I understand at least the subject matter you're
20 concerned about, your motion is granted. Mr. Reizenstein is
21 going to respond and produce documents on a rolling basis
22 beginning as soon as he can. He is going to complete his
23 production within 14 days. He is going to begin that
24 production by choosing documents that he has already identified
25 and produced to the government.

1 Within the 14-day window the parties, with the benefit
2 of the ruling that the motion to quash has been denied and that
3 the court has reviewed and largely overruled the objections but
4 observed that the requests could be more narrow, and with the
5 benefit then of further conferral and opportunity for the
6 respondent to provide more specific objections about the scope
7 of any of those requests, we will conduct a status conference
8 so that if the parties continue to dispute the scope of
9 responsive documents compelled, we can take it up without
10 briefing and hopefully resolve it in the most quick and
11 inexpensive way that we can.

12 MR. SULLIVAN: Thank you. Your Honor has answered --

13 THE COURT: Oh, good.

14 MR. SULLIVAN: -- my unartful question. Thank you.

15 MR. REIZENSTEIN: So just to be clear, I'm taking that
16 as a directive that there have been prior negotiations and
17 conversations between counsel where they have offered to narrow
18 certain scopes. I am going to sit down with him and go over
19 those and still if that is still something that is agreeable
20 and move from there.

21 If, after we have made those agreements, there is an
22 additional one where there is a difficulty, we would alert the
23 court and say we are all good except for number so-and-so, this
24 is what they want, this is what we propose, you're aware of
25 everything, and we need some guidance.

1 THE COURT: Exactly.

2 MR. REIZENSTEIN: OK.

3 THE COURT: When you say you have to alert the court,
4 you won't have to ask for a hearing. I am going to give you a
5 prophylactic date. If, for whatever reason, you all have
6 resolved everything and you prefer not to speak to me that day,
7 file a joint notice that tells me there are no disputes pending
8 and I will cancel it.

9 MR. REIZENSTEIN: OK.

10 THE COURT: OK. So again, I'm looking around the
11 30th. The last thing I want to do is prevent the parties from
12 effectively communicating and producing documents because they
13 have got a status conference, but I'd like to keep you
14 somewhere right around there. So it looks to me like either
15 the 29th, 30th, 31st.

16 MR. REIZENSTEIN: I truly promise you it is not a
17 matter of being given an inch and taking a mile, and I hope to
18 show that to you through what we do in the next few days, but
19 just in terms of hearings that are scheduled I would greatly
20 prefer the 31st.

21 MR. SULLIVAN: I have no objection to that, your
22 Honor.

23 THE COURT: Morning, noon, or night?

24 MR. REIZENSTEIN: That is open to the court. I am
25 free that day and I am not the other days.

1 THE COURT: OK.

2 MR. REIZENSTEIN: And I don't want to jam myself up.

3 THE COURT: All right.

4 Mr. Sullivan.

5 MR. SULLIVAN: Yes. Also I can make myself available
6 all day, your Honor. I appreciate your Honor's willingness to
7 do the conference over the phone.

8 THE COURT: Of course. We will set it for 10:00. We
9 will do it over the phone.

10 If there are protracted differences that you think are
11 going to require a lot of argument, I would be grateful for a
12 notice the night before, at the latest, that tells me which
13 request numbers are still at issue or if it is not a request
14 number, that it is a scope issue -- the parties continue to
15 dispute whether or not the client has to collect old phones --
16 whatever that is just gives me a heads up.

17 If I think it is going to be a lot of oral argument, I
18 may switch us to Zoom because contested argument can sometimes
19 be difficult on the phone. Either way we will do it remotely
20 to try to cut down on the cost of travel and appearance in
21 court.

22 MR. REIZENSTEIN: May I have one moment to confer with
23 my client before we conclude?

24 THE COURT: Of course.

25 MR. SULLIVAN: Thank you, your Honor.

1 (Pause)

2 MR. REIZENSTEIN: OK, Judge. Final point, and I
3 don't, unfortunately, know for sure. Again, speaking frankly,
4 as I tried to do throughout the course of this, I have a client
5 that has bigger concerns and drives all of our actions here in
6 this regard.

7 Should she decide to object to the court's order, and
8 I am obviously trying to say that if there is no objection we
9 are going to immediately begin compliance here to get this
10 done, how do I alert the court to that?

11 THE COURT: To an appeal of any order?

12 MR. REIZENSTEIN: Essentially, yes. I don't know that
13 is going to happen, but --

14 THE COURT: I understand.

15 MR. REIZENSTEIN: -- I have to really spend 45
16 minutes, that you don't have, sitting down with my client
17 saying, this is really where we are at, this is where I think
18 we need to go, this is how we get there, and this is what I
19 suggest.

20 THE COURT: You appeal to the district court judge.

21 MR. REIZENSTEIN: No, I understand.

22 THE COURT: In terms of alerting within the 14 days --

23 MR. REIZENSTEIN: Well, I would have to say to you,
24 gee, we have consulted other counsel, whatever, and we are
25 going to take this issue up further, it now affects counsel. I

1 don't want to do anything at this point because I'm sensitive
2 to his deadlines and the delays that have occurred here.

3 THE COURT: But I'm not sure I follow your question.

4 MR. REIZENSTEIN: If we appeal, we are going to need
5 something in writing, I guess, or we will just get the
6 transcript.

7 THE COURT: Oh, no, you will get a written order.

8 MR. REIZENSTEIN: Right. OK.

9 THE COURT: Sorry. A written order always follows.

10 MR. REIZENSTEIN: OK. I guess we would immediately
11 alert everyone if that is the course we are going to take.

12 THE COURT: Yes.

13 MR. REIZENSTEIN: Which I am not saying now is going
14 to happen.

15 THE COURT: It is OK.

16 MR. REIZENSTEIN: It has to be discussed with my
17 client, obviously.

18 THE COURT: It might surprise you, not the only case
19 in which I have had an appeal or objections filed to a
20 discovery order that I have entered.

21 MR. REIZENSTEIN: Right. OK. I just wanted to make
22 sure because we are proceeding along the lines of, let's get
23 this done and get it done as easily and quickly and least
24 expensively as possible, and I appreciate that, and I think
25 that is a strong consideration here, but it doesn't necessarily

1 mean that is a thousand percent the way it is going to go.

2 THE COURT: I get it. I can only do what I can do. I
3 don't control your client's decisions in this litigation. I
4 just rule on the motions that are brought before me.

5 MR. REIZENSTEIN: As long as that's clear, because I
6 didn't want it to be like I had perhaps misrepresented that
7 that was a potential, then I feel comfortable.

8 THE COURT: OK.

9 MR. REIZENSTEIN: My strong inclination is if we don't
10 do that, as I said, we will immediately start rolling
11 production.

12 THE COURT: OK. All right. So then I understand your
13 point, which is then that any objection to the court's decision
14 with respect to the motion to quash I am going to have to
15 change the deadline for. We are not going to adhere to 14 days
16 under the local rules. It will have to be filed within five.

17 MR. REIZENSTEIN: Sure.

18 THE COURT: In order for the parties to know how they
19 are going to proceed here.

20 MR. REIZENSTEIN: And that's OK.

21 THE COURT: There will be a written order.

22 MR. REIZENSTEIN: Right.

23 THE COURT: If the compliance hasn't started, then the
24 petitioner will have a choice to make about moving for contempt
25 or where they are.

1 MR. REIZENSTEIN: That is fine.

2 THE COURT: OK.

3 MR. REIZENSTEIN: I think that is very fair, but I
4 wanted to make sure that was out there so there were no
5 curveballs here.

6 THE COURT: I am glad that you raised it.

7 The deadline to file objections to the written order
8 is five days.

9 MR. REIZENSTEIN: Sure.

10 THE COURT: OK.

11 MR. REIZENSTEIN: I am more comfortable with that
12 because I don't want to be in a position of saying anybody
13 misled anybody and didn't raise what could potentially be an
14 issue, and I have no idea if it will be.

15 THE COURT: OK.

16 MR. REIZENSTEIN: All right. Thank you, Judge.

17 MR. SULLIVAN: Your Honor, if I may respond?

18 THE COURT: OK.

19 MR. SULLIVAN: So if I can understand, is this the
20 court to which we would request, perhaps, expediting this
21 appeal or is that something we take directly to the district
22 judge?

23 THE COURT: Either judge can shorten the time to file
24 objections, and I just did.

25 MR. SULLIVAN: You just did, your Honor.

1 THE COURT: Yes.

2 MR. SULLIVAN: Thank you, your Honor.

3 THE COURT: OK. All right. I think we are all on the
4 same page. That was extremely helpful. Took a little bit
5 longer than you might have prepared to be with me, but I had
6 questions.

7 So with the benefit of your presentations, you know
8 the ruling, but I will memorialize it in a written order, which
9 is appealable.

10 MR. REIZENSTEIN: All right. Thank you for your time.

11 MR. SULLIVAN: Thank you for your time, your Honor.

12 THE COURT: Of course.

13 (Adjourned)

14

15 C E R T I F I C A T E

16

17 I hereby certify that the foregoing is an accurate
18 transcription to the best of my ability of the digital audio
19 recording in the above-entitled matter.

20 August 23, 2022

s/ Joanne Mancari
Joanne Mancari, RPR, CRR, CSR
Court Reporter
jemancari@gmail.com

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